



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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ATTORNEY GENERAL**

May 15, 1953

**Hon. Allan Shivers
Governor of Texas
Austin, Texas**

Letter Opinion No. MS-35

**Re: Constitutionality of Senate
Bill 74.**

Dear Sir:

**You have requested an opinion on the constitutionality of
Senate Bill 74 which provides as follows:**

**"A Bill to be entitled an Act amending Article 128
of the Revised Civil Statutes of Texas, 1925, as amended,
so as to permit the Commissioner of Agriculture to enter
into reciprocal agreements with responsible officers of other
States; providing a saving clause; and declaring an emergency.**

"Be it enacted by the Legislature of the State of Texas:

**"Section 1. That Article 128 of the Revised Civil Stat-
utes of Texas, 1925, as amended, be, and the same is hereby
amended by adding to this Article the following:**

**" 'Notwithstanding the above provisions, the Commission-
er of Agriculture may enter into reciprocal agreements with
the responsible officers of other States under which nursery
stock owned by nurserymen or dealers of such other States may
be sold or delivered in this State without the payment of any fee
provided that like privileges are accorded to Texas nurserymen
and dealers in such other States and provided that the Texas Com-
missioner of Agriculture shall find that such other States, before
issuing their certificates, require inspections equal to those re-
quired under the Texas law.' " (Section 2 provides for a severa-
bility clause. Section 3 provides for an emergency clause.)**

**Section 36 of Article III of the Constitution of Texas provides
as follows:**

**"No law shall be revived or amended by reference to its
title; but in such case the act revived, or the section or sections**

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amended, shall be re-enacted and published at length."

In construing this provision of the Constitution the Supreme Court of Texas held that an existing statute cannot properly be amended by adding a provision to it without attempting to re-write or re-enact the section sought to be amended. Henderson v. City of Galveston, 102 Tex. 163, 114 S.W. 108 (1908); Westervelt v. Yates, 145 Tex. 38, 194 S.W.2d 395 (1946). It is stated in the Galveston case:

"By referring to the charter it will be seen that section 34, the one amended, is not re-enacted in the amendatory act; the amendment being accomplished by the addition of a distinct provision conferring additional powers upon the board of commissioners. Section 36, art. 3, of the Constitution, provides: 'No law shall be revived or amended by reference to its title; but in such case the act revived or the section or sections amended shall be re-enacted and published at length.' In its language and structure the statute plainly violates this provision. By its very terms it undertakes to amend section 34 of the charter, and that section as amended is not re-enacted, and of course cannot be published at length in the new statute. Nor is there anything in the nature of the provision to take it out of the operation of the Constitution. It is not only named an amendment, but it is such in its character. It adds a provision to the existing section, and this, according to all authority, judicial or parliamentary, of which we know anything, is an amendment."

The Westervelt case states:

"This case is not ruled by Henderson v. City of Galveston, 102 Tex. 163, 114 S.W. 108. The act that was held invalid by that decision was named an amendment of a section of an existing statute and did not rewrite or re-enact that section, but undertook to amend it by adding a provision to it. Chapter 300 of the Acts of the Regular Session of the 49th Legislature is not of that character; and in our opinion it is, for the reasons stated, and in view of the authorities cited, a complete act, and is not an amendment forbidden by Section 36 of Article III of the Constitution of Texas."

In view of the foregoing it is our opinion that Senate Bill 74 violates the provisions of Section 36 of Article III of the Constitution of

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Texas and is therefor unconstitutional.

Yours very truly,

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By
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SCR:am:da